

ROBIN B. JOHANSEN, State Bar No. 79084
THOMAS A. WILLIS, State Bar No. 160989
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
FAX: (510) 346-6201

Attorneys for Defendants
(Please see following page for complete list of parties represented.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANDREA ESQUIVEL, et al.,

Plaintiffs,

vs.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

) No.: CV 07 5709 MHP

) **[PROPOSED] ORDER GRANTING**
) **DEFENDANTS' MOTION TO DISMISS**

) Hearing:

) Date: April 21, 2008

) Time: 2:00 p.m.

) Crtrm.: 15

(The Honorable Marilyn H. Patel)

1 Attorneys for Defendants:
2 San Francisco Unified School District, San Francisco
3 Board of Education, City and County of San Francisco,
4 Eric Mar, Mark Sanchez, Jane Kim, Kim-Shree Maufas,
5 Norman Yee, Jill Wynns, Hydra Mendoza, Carlos Garcia,
6 Dan Kelly and Sara Lipson
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This matter came on for hearing on defendants' Motion to Dismiss on April 21, 2008.
2 Plaintiffs were represented by LeRue Grim, Esq., and defendants were represented by Thomas A.
3 Willis, Esq. The Court, having heard the arguments of counsel and considered the written
4 submissions, finds as follows:

5 1. Plaintiffs brought this action against defendants under 42 U.S.C. section 1983,
6 claiming that the San Francisco Board of Education violated their First Amendment rights by deciding
7 to terminate the Junior Reserve Officer's Training Corps (JROTC) program after the 2008-09 school
8 year. JROTC is a leadership program sponsored by the Department of Army and is offered to public
9 and private high schools throughout the country. The JROTC program is part of the San Francisco
10 Unified School District's curriculum because students receive academic credit for participating in the
11 program. Plaintiffs claim that the District has violated their First Amendment rights by refusing to
12 offer the JROTC program in the future. Plaintiffs do not contend that the School District has limited
13 their speech in anyway. This is not a speech suppression case.

14 2. Defendants brought this motion to dismiss under Rule 12(b)(6) of the Federal
15 Rules of Civil Procedure on the grounds that plaintiffs cannot state a valid cause of action because the
16 First Amendment does not limit the ability of a school district to decide matters of school curriculum.

17 3. The Court agrees with defendants. Both the United States Supreme Court and
18 the Ninth Circuit have held that school districts have broad discretion over curriculum decisions.
19 Moreover, when a school district makes curriculum decisions, it is the speaker for First Amendment
20 purposes. "[W]hen the State is the speaker, it may make content-based choices. When the University
21 determines the content of the education it provides, it is the University speaking, and we have
22 permitted the government to regulate the content of what is or is not expressed" *Rosenberger v.*
23 *Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 833-34 (1995). In *Downs v. Los Angeles Unified*
24 *Sch. Dist.*, 228 F.3d 1003, 1013 (9th Cir. 2000), the Ninth Circuit followed that standard by stating that
25 "when a public high school is the speaker, its control of its own speech is not subject to the constraints
26 of constitutional safeguards and forum analysis" *See also Chiras v. Miller*, 432 F.3d 606, 611
27 (5th Cir. 2005); *Edwards v. California Univ. of Pa.*, 156 F.3d 488, 491 (3rd Cir. 1998).

1 4. The JROTC program is part of the School District's curriculum and therefore
2 the School Board had discretion to decide to phase-out the program. The Board's decision to do so
3 does not implicate the First Amendment. Therefore, plaintiffs have failed to state claim upon which
4 relief can be based.

5 Upon the basis of the foregoing, the Court hereby ORDERS:

- 6 1. That defendants' motion to dismiss is granted.
- 7 2. That plaintiffs' Petition for Declaratory and Temporary and Permanent
8 Injunctive Relief is hereby dismissed with prejudice.
- 9 3. That plaintiffs shall take nothing from this case.

10 IT IS SO ORDERED.

11 DATED:

12
13
14 THE HONORABLE MARILYN H. PATEL
15 UNITED STATES DISTRICT COURT JUDGE

16 (00054317-2)